

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Joseph BRADSHAW

PETITIONER/APPELLANT

V.

UNITED STATES OF AMERICA

DEFENDANT/APPELLEE

FILED

DEC 28 2005

CIV. NO. 03-12324-DPW

App. NO. 05-2196

CR. NO. 96-10032

MOTION FOR THE GOVERNMENT TO  
STIPULATE WITH THE COURT'S APPROVAL  
THE FOLLOWING FACTUAL STATEMENT  
AS THE RECORD ON APPEAL IF A  
C.O.A. IS GRANTED

NOW COMES THE APPELLANT (BRADSHAW'S) PRO-SE  
MOTION FOR THE GOVERNMENT TO STIPULATE WITH  
THE DIST. COURT'S APPROVAL THE FOLLOWING FACT-  
UAL STATEMENT PURSUANT TO LOCAL RULE 10 (d)  
AS THE RECORD ON APPEAL IF A C.O.A. IS GRANTED.

(1) COUNSEL'S INEFFECTIVE CLAIM  
FOR FAILURE TO GET AN ADVANCED RULING  
ON THE ADMISSIBILITY OF 804(B)(3) HEARSAY  
PRIOR TO HER OPENING STATEMENT WHAT  
EXACTLY THE EVIDENCE WILL SHOW. AS  
WELL AS INEFFECTIVE ASSISTANCE OF  
COUNSEL FOR FAILURE TO CITE US  
V. SEELEY 892 F.2D 1, 1ST CIR  
1989 TO THE DISTRICT COURT JUDGE

AND ON DIRECT.

(A) TRIAL COUNSEL'S OPENING STATEMENT DID INCLUDE THE FOLLOWING SPECIFIC DEFENSE THEORY PROMISED TO THE JURY:

"THE EVIDENCE WILL SHOW THAT DONNY DESIMONE AND HIS BROTHER, RONNY DESIMONE, AND THE GOVERNMENT'S INFORMANT, MICHAEL STANLEY, CAME UP WITH THE IDEA TO DO THE POSTAL ROBBERY; THAT DONNY DESIMONE PLANNED IT; THAT DONNY DESIMONE EXECUTED IT; THAT DONNY DESIMONE MADE THE ARRANGEMENTS FOR IT; AND THAT DONNY DESIMONE DROVE THE GETAWAY CAR. THE EVIDENCE WILL SHOW LADIE'S AND GENTLEMAN, THAT WHEN DONNY DESIMONE REALIZED THAT HE COULD DO BETTER THAN THE SHARE HE WAS SUPPOSE TO GET FROM THE INITIAL PLAN TO DO THE ROBBERY, HE MADE ARRANGEMENTS WITH TEDDY SUTHERLAND TO HAVE TEDDY SUTHERLAND ROB THE ROBBER AND GET 50% FROM THE SHARE'S OF THE ROBBERY.

ORIGINALLY FILED THE SUPPRESSION MOTION DID NOT SUBPOENA KEVIN CALLY, JAMES WERRA, CHRISTINA BELLEFEUILLE AND/OR PUT BRADSHAW ON THE STAND DURING THE SUPPRESSION HEARING.

(B) STIPULATE AND AGREE, THAT THE INFORMANT SOURCE RESPONSIBLE FOR THE SEARCH WAS COOPERATING WITNESS JAMES WERRA WHO SPECIFICALLY TOLD THE GOVERNMENT THAT BRADSHAW AND KEVIN CALLY WERE LIVING AT 1860 COMM. AVE IN BRIGHTON AND THAT THE GUNS STORED THERE WERE BRADSHAW'S, AMONG OTHER THINGS.

(C) STIPULATE AND AGREE, THAT CHRISTINA BELLEFEUILLE'S TRIAL TESTIMONY IN THIS REGARD WAS THE SAME. AMONG OTHER THINGS

(D) STIPULATE AND AGREE, THAT FREDRICK CALLY AND HIS WIFE WERE RESIDING IN N.H. IN THE SUMMER OF 1985, AND LEFT THE BRIGHTON APT. TO BE TENDED BY THEIR SON KEVIN CALLY.

(E) STIPULATE AND AGREE, THAT THE AGENT HAD TO REQUEST FREDRICK AND HIS WIFE TO RETURN FROM THEIR N.H. RESIDENCE AND WHEN THEY LET THE AGENT INTO

(M) STIPULATE AND AGREE, THAT PRIOR COUNSEL DID NOT RAISE KEVIN CALLY'S BENEFITS AT THE SUPPRESSION HEARING.

(N) STIPULATE AND AGREE THAT PRIOR COUNSEL AND TRIAL AND APPELLATE COUNSEL NEVER FILED FOR DISCOVERY PURSUANT TO FED. R. CRIM. P. C.R. 116.2 AND/OR RAISED ROVIAO V. US, 353 US 53 (1957) IN AN ATTEMPT TO DETERMINE IF, KEVIN CALLY IN EXCHANGE FOR NOT BEING PROSECUTED EVER TOLD THE GOVERNMENT THAT "HE GAVE BRADSHAW PERMISSION TO STAY AT THE RESIDENCE AND STORE HIS BELONGINGS". ROVIAO, HOLDS WHEN A SOURCE BECOMES A WITNESS. AND F.R. ~~CRIM~~ CRIM P. C.R. 116.2 HOLDS DISCOVERY INVOLVING EXCULPATORY INFORMATION MUST BE TURNED OVER BECAUSE IT MAY CAST DOUBT ON THE ADMISSIBILITY OF EVIDENCE THAT MIGHT BE SUBJECT TO A MOTION TO SUPPRESS.

(4) COUNSEL'S INEFFECTIVE CLAIM FOR FAILURE TO BRIEF OR DIRECT THE APPELLANT BRADSHAW'S DENIAL OF A SPEEDY TRIAL, WHEN THE DOCKET ENTRIES AND CASELAW AND STATUTE TAKEN TOGETHER CONFIRMED A S.T.A. VIOLATION. WHEN THE MATTER WAS FIRST RAISED THE DELAY WAS 3 YEARS. THE DELAY WAS

EASILY ATTRIBUTABLE TO THE DISTRICT COURT AND GOVERNMENT.. THE COURT FOR FAILURE TO RULE ON THE DISQUALIFICATION MOTION, FOR OVER 3 1/2 YEARS, AND THE GOVERNMENT FOR THE MOTION BEING PRETEXTUAL. THE APPELLANT DID ASSERT THE RIGHT, AND DID MAKE A SHOWING OF PREJUDICE.

- (A) STIPULATE AND AGREE, THAT THE DOCKET ENTRIES DO NOT REFLECT THE DISTRICT COURT'S ORDER WITH REGARDS TO BRADSHAW'S MOTION MEMORANDUM OF LAW FOR A S.T.A. VIOLATION WITH A AFFIDAVIT IN SUPPORT D.E. 357, AND 358 9-3-99.
- (B) STIPULATE AND AGREE THE DISTRICT COURT IN PRE-TRIAL DENIED THE SPEEDY TRIAL MOTION OUT OF HAND, WITHOUT A HEARING AND WITHOUT STATING ON THE RECORD WHICH DATE'S WERE ~~EXACTLY~~ EXACTLY EXCLUDABLE AND WHICH DATE'S WERE NON-EXCLUDABLE UNDER THE ACT.
- (C) STIPULATE AND AGREE, THE DISTRICT COURT POST TRIAL DURING A 2255 CHALLENGE DENIED THE CLAIM COUNSEL WAS INEFFECTIVE FOR FAILURE TO RAISE THE S.T.A. CLAIM WITHOUT

A HEARING AND/OR WITHOUT SPECIFYING WHICH DAYS WERE EXCLUDABLE AND WHICH NON EXCLUDABLE UNDER THE ACT.

(D) STIPULATE AND AGREE, THE GOVERNMENT LODGED A WARRANT IN THE CASE AT GAR ON 9-21-95, INDICTED BRADSHAW ON 1-31-96, ARRAIGNED BRADSHAW ON 2-9-96, AND TRIED THE CASE, FROM 4-3-2000, UNTIL THE JURY RETURNED A VERDICT ON 4-27-00.

(E) STIPULATE AND AGREE, ON FEBRUARY 14, 1996 THE GOVERNMENT FILED A MOTION TO DISQUALIFY SCAPICCHIO, CITING HER MULTIPLE REPRESENTATION'S, AND ALLEGING SHE WOULD BE ULTIMATELY BE NAMED AS A PARTICIPANT IN CERTAIN CRITICAL EVENTS IN THE CASE, IF NOT CALLED OUT RIGHT AS A WITNESS..

(F) STIPULATE AND AGREE, THAT MAGISTRATE COHEN'S MARCH 29, 1996 ORDER DISQUALIFYING SCAPICCHIO STATED:

AS THE GOVERNMENT APPROPRIATELY CONTENDS... ABOVE THE CRITICAL LINK - THE LINK WHICH DEFENDANT WOULD DENY THE GOVERNMENT - IS THE LINK BETWEEN THE RECEIPT OF MONEY

AND SUPPLYING OF INFORMATION CONCERNING THE IDENTITY OF COOPERATING WITNESSES. IT SHOWS, AT ONCE, MOTIVE AND PLANNING ON THE PART OF SUTHERLAND; SIMPLY STATED, HE PROVIDED, THROUGH AN INTERMEDIARY, SOME \$9,000 OF THE PROCEEDS OF THE ARMED ROBBERY WITH A VIEW AND EXPECTATION THAT "INSIDE" INFORMATION WOULD BE PROVIDED BY THAT ATTORNEY CONCERNING THE IDENTITY OF COOPERATING WITNESSES; AND THAT ATTORNEY - EVEN THOUGH UNWITTINGLY - DID AS EXPECTED AND ANTICIPATED BY SUTHERLAND, PROVIDED THE VERY INFORMATION SOUGHT. IT IS IMPORTANT EVIDENCE, MATERIAL EVIDENCE, AND CLEARLY NECESSARY TO THE GOVERNMENT'S CASE AGAINST SUTHERLAND. IN THIS COURT'S VIEW, THE RATIONALE OF DIOZZI AND ITS PROGENY CLEARLY FAVOR'S THE GOVERNMENT IN THE CIRCUMSTANCES OF THIS CASE, AND DISQUALIFICATION IS WARRANTED, THE PRESUMPTION OF

COUNSEL OF ONE'S CHOOSING  
... NOTWITHSTANDING

- (G) STIPULATE AND AGREE, THAT RONNY AND DONNY DESIMONE WEREN'T EVEN COOPERATING AT THE TIME OF THE ATTEMPTED MURDER.
- (H) STIPULATE AND AGREE, THAT THE GOVERNMENT'S DISQUALIFICATION MOTION PRESENTED TO MAGISTRATE COHEN WAS "PRETEXTUAL" WHICH ERRENEOUSLY LED THE MAGISTRATE TO CONCLUDE IN HIS ORDER THAT SCAPICCHIO PROVIDED CORRECT INSIDE INFORMATION ABOUT WHO WAS COOPERATING WITNESSES.
- (I) STIPULATE AND AGREE, THAT SUTHERLAND APPEARED THE MAGISTRATE'S ORDER AND THAT JUDGE LYNN WOLF AND WOODLOCK COMBINED FAILED TO ULTIMATELY DECIDE THE MOTION FOR OVER 3 1/2 YRS.
- (J) STIPULATE AND AGREE, THAT THE GOVERNMENT IN THE 6-21-86 HEARING TO ADDRESS THE DISQUALIFICATION MOTION AND EACH GOVERNMENT FILING THEREAFTER, THE GOVERNMENT MAINTAINED TO THE DEFENSE AND COURT THE SAME PRETEXTUAL THEME

FOR 3 1/2 YRS, THAT SCAPICCHIO PROVIDED CORRECT INSIDE INFORMATION ABOUT WHO WAS COOPERATING, WHICH THE GOVERNMENT KNEW WAS FALSE.

(K) STIPULATE AND AGREE, THAT THE PRODUCTION OF STANLEY'S 1995 302, TURNED OVER IN AUGUST 1999 CONFIRMS THESE PRE-TEXTUAL GOVERNMENT FILING'S WITH REGARD TO THE DISQUALIFICATION MOTION.

(L) STIPULATE AND AGREE, THAT SINCE THE RECORD CONFIRMS THESE PRE-TEXTUAL FILING'S, COMBINED WITH THE DISTRICT COURT'S FAILURE TO RULE, THAT THE DISQUALIFICATION MOTION IS NON EXCUSABLE FOR THE PURPOSE'S OF THE S.T.A. VIOLATION CLAIM.

(M) STIPULATE AND AGREE, THAT BETWEEN 12-5-97 JUDGE WOLF'S ORDER, AND 4-2-98 JUDGE WOLF'S SCHEDULING FOR CONFERENCE WHICH DIDN'T TAKE PLACE IS 117 DAYS INCURRED AGAINST THE SPEEDY TRIAL CLOCK.

(N) STIPULATE AND AGREE, THAT BETWEEN 7-8-98 WHEN THE SUPERCEEDING INDICTMENT WAS RETURNED AND 7-28-98 WHEN BRADSHAW

WAS ARRANGED, THAT 3161 (H) (1)(H) EXCLUDES FROM 7-8-98 UNTIL 7-18-98, BUT FROM 7-18-98 UNTIL 7-28-98, ADD'S 10 DAY'S TO THE SPEEDY TRIAL CLOCK AND VIOLATION.

(O) STIPULATE AND AGREE THAT BETWEEN ARRANGEMENT ON 7-28-98 UNTIL 11-10-98 WHEN BRADSHAW FILED 8 PRO-SE MOTIONS TO COMPEL COUNSEL TO FILE ADD'S 113 DAY'S TO THE SPEEDY TRIAL CLOCK VIOLATION.

(P) STIPULATE AND AGREE THAT BETWEEN 11-24-98 WHEN JUDGE WOLF APPOINT'S ATTORNEY WEINSTEIN UNTIL 12-4-98 WHEN BRADSHAW FILES A MOTION TO DISMISS ADD'S 10 DAY'S TO THE S.T.A. CLOCK VIOLATION'S.

(Q) STIPULATE AND AGREE THAT JUDGE WOLF TOOK NO ACTION IN THE CASE FROM 12-5-97 UNTIL JANUARY 13, 1999, DUE TO HIS OBLIGATION IN US V. SALEM AND MARTARANO, WHICH REQUIRED HIM TO HAVE THE CASE RE-DRAWN ON 1-14-99.

(R) STIPULATE AND AGREE THAT BETWEEN 1-15-99 WHEN THE CASE WAS REASSIGNED FROM JUDGE WOLF TO JUDGE WOODLOCK, AND 3-22-99

When the government requested a status conference hearing add's 45 days to the speedy trial clock and violation.

(5) stipulate and agree, that as a result of the district court not ruling on the disqualification motion, and the government's motion being proven pre-textual and neither stopping the STA clock a total of 295 are credited to the STA. violation, mandating dismissal with or without prejudice.

(5) The sentencing issue requesting a C.O.A. to raise the 3-strike exception that fits squarely within the recent Supreme Court decisions of Blakely, Booker, Fan-Fan and Shepard, which clarified and defined the 6th Amendment principles the Supreme Court found in Apprendi.

(A) stipulate and agree that Bradshaw raised and preserved his Apprendi claim at sentencing, and on direct.

(B) stipulate and agree, that the above  
(19)

SUPREME COURT DECISIONS WERE NOT DECIDED  
WHEN BRADSHAW WAS SENTENCED AND/OR AT  
THE TIME DIRECT WAS DECIDED..

Respectfully Submitted

DATED 12-12-05

Joseph Bradshaw  
20980-038

U.S.P. MAX- A-D-X

Box 8500

FLORENCE CO. 81224

CERTIFICATE OF SERVICE AND  
VERIFICATION.

I, JOSEPH BRADSHAW, DO HEREBY CERTIFY AND  
VERIFY PURSUANT TO 28 U.S.C. § 1746 UNDER THE  
PENALTY OF PERJURY THE FOREGOING MOTION  
FOR STIPULATION IS TRUE AND ACCURATE, AND  
THAT I HAVE CAUSED A TRUE COPY OF THE  
SAME TO BE SERVED BY 1ST CLASS MAIL,  
POSTAGE PRE-PAID ON A.U.S.A. DINA M.  
CHAITOWITZ, ONE COURTHOUSE WAY, Suite 920U,  
BOSTON MA. 02210

DATED 12-12-05

Joseph Bradshaw